



# THE EQUAL RIGHTS TRUST

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The Equal Rights Trust  
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It is also a registered  
charity, number 1113288.

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Executive Director

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September 17, 2009

Dear Sir

## **RE: Lubna Hussein case and Article 152 of the Criminal Act (1991)**

I write on behalf of The Equal Rights Trust (ERT), an independent international organization whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

ERT is concerned about the existence and the discriminatory application by Sudanese courts of Article 152 of the 1991 Criminal Act, and **urges you to repeal this provision**. We also urge you to carry out a review of Sudan's legislation to ensure that it gives effect to the principle of non-discrimination as enshrined in binding international treaties to which Sudan is a State Party and in Sudan's constitution.

This letter was prompted by the conviction on 7 September 2009 of Ms Lubna Hussein under the above-mentioned Article. While noting the release of Ms Hussein following the payment of her fine by the Sudanese Journalists Union, ERT remains deeply concerned

about the application of Article 152 in this case and in particular the issues that it raises in respect to the rights of women and the right to freedom from discrimination in Sudan. As Ms Hussein herself has said, her release – while welcome – only serves to highlight the plight of those women whose cases have not been the subject of international and national scrutiny.

**Article 152 of the 1991 Criminal Act** provides:

(1) Whoever commits, in public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent or immoral dress, which causes annoyance to public feelings, shall be punished, with whipping not exceeding forty lashes, or a fine or both.

(2) The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the custom of the country where the act occurs.<sup>1</sup>

This provision raises a number of serious human rights concerns, some of which have been highlighted by other international human rights organizations, including Amnesty International.<sup>2</sup> The prescribed punishment for violation of Article 152, which includes whipping, is in direct contravention of Sudan's obligations under domestic and international law, which prohibit torture and cruel, inhuman or degrading treatment or punishment. In this regard, I would like to reiterate the findings of the African Commission on Human and Peoples' Rights which in 2003 called on Sudan to immediately amend the Criminal Act of 1991 and abolish the penalty of lashes, in conformity with its obligations under the African Charter and other relevant international human rights instruments to which Sudan is a State Party.<sup>3</sup>

Furthermore, attention has been drawn to the fact that the text of Article 152 is vague and broadly formulated, rendering its material content and scope unclear by leaving open the question of what constitutes "indecent" or "immoral" dress or conduct. As has been highlighted by the United Nations Office of the High Commissioner for Human Rights, the law does not define indecent or immoral dress, leaving "wide discretion to police officers [and] raising concerns that the arrests are being conducted arbitrarily."<sup>4</sup> The application of the law is reported to vary within the Sudan from one state to another, at the discretion of

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individual law enforcement officers and judges.<sup>5</sup> Indeed, whilst Lubna Hussein was convicted for wearing trousers, she has highlighted through public statements on her case the fact that female soldiers and officers in the Sudanese army also wear trousers as part of their official uniform.

In addition to these concerns, and as an international organization with expertise in the promotion of equality and protection of the right to non-discrimination, ERT is also particularly concerned about the apparent discriminatory application of Article 152.

### **Discrimination on the Ground of Gender**

Whilst it is gender neutral on its face, Article 152 of the Criminal Act has reportedly been applied in a manner that discriminates against women. According to reports by national and international human rights organizations, Article 152 has often been used to prosecute women for conduct – such as the wearing of trousers – deemed inappropriate by individual law enforcement officers and judges. Amnesty International has asserted that women are “routinely arrested, detained, tried and then, on conviction, flogged simply because a police officer disapproves of their clothing”.<sup>6</sup>

International law requires freedom from both **direct** and **indirect discrimination** on grounds of gender. Available evidence suggests that the application of Article 152 has led to both direct and indirect discrimination against women. Thus, where women are targeted (arrested, charged, tried and punished) on the basis of their gender under this provision, i.e. they are treated less favourably than men on account of being women, they are subjected to **direct discrimination**.

However, even if it could be demonstrated that this provision has been applied without regard to sex, women have been put at a particular disadvantage without justification, i.e. they have been subjected to **indirect discrimination**. There is abundant evidence to suggest that it has been predominantly women who have been prosecuted under Article 152.

### **Discrimination on Other Grounds**

ERT is also concerned about the discriminatory impact of the implementation of Article 152 on the right to freedom of thought, conscience and religion.

In the Hussein case, it has been reported that some of the women arrested alongside Lubna Hussein on 3 July 2009 in the Um Kulthoum restaurant in the Riyadh area east of Khartoum, were non-Muslims. Furthermore, it appears that arresting non-Muslim women on account of their dress is not an isolated case: many women sentenced by the Public Order Courts – the courts that apply Article 152 and other public order legislation – are non-Muslims who

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have been displaced to the north by the conflict in the South.<sup>7</sup> The arrest of non-Muslims for failing to meet the standards of dress expected by certain law enforcement officers constitutes discrimination on grounds of religion.

### **National and International Law and Standards**

The case of Ms Hussein underscores the urgent need to **review and repeal relevant sections of the 1991 Criminal Act to ensure it is in line with domestic and international law.**

In this respect, we would urge you to adhere to commitments made under the Comprehensive Peace Agreement (2005) which requires a comprehensive review of all national laws, including the 1991 Criminal Act, to bring them into line with the Interim National Constitution (2005) and Sudan's international human rights obligations.

Article 152 of the 1991 Criminal Act should be repealed without delay for two main reasons. First, the penalty it provides is a violation of the right to be free from torture or other cruel, inhuman or degrading punishment. Secondly, its application has been consistently discriminatory on grounds of gender and could be shown to be discriminatory on other grounds including religion. The discriminatory effect of the implementation of Article 152 of the 1991 Criminal Act is contrary to the principle of non-discrimination on grounds of sex enshrined in the Constitution of Sudan and international law, including Article 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Sudan is state party.

All people in Sudan have the right to equal protection of the law by virtue of the Bill of Rights enshrined in the Interim National Constitution. In particular, Article 31 guarantees that "[a]ll persons are equal before the law and are entitled without any discrimination, as to race, colour, sex, language, religious creed, political or other opinion, national, social or ethnic origin, property, birth or other status, to the equal protection of the law." Article 32 further provides for the equal rights of men and women to the enjoyment of all civil and political rights and all social, cultural and economic rights.

In October 2008, ERT launched the *Declaration of Principles on Equality*, an instrument of best practice which contains 27 legal principles reflecting a moral and professional consensus among human rights and equality experts from around the world. The *Declaration* was adopted, amongst other things, to assist governments and legislators to review and draft legislation and policy with a view to improving national protection of the right to equality and non-discrimination. In order to implement constitutional guarantees of equality before the law and to protect the fundamental right of non-discrimination, we recommend to you the *Declaration* as a tool to review and amend national legislation related to equality. The text of the *Declaration* is attached, and it can also be found at: <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perffect%20principle.pdf>

In this regard, we urge you to amend any national legislation that lends itself to be used as a tool to discriminate or to harass women and other vulnerable groups in society. Where

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Yours sincerely,

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**Dimitrina Petrova**  
Executive Director  
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The Peoples Hall  
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Khartoum State  
Postal Code 931  
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**Dimitrina Petrova**  
Executive Director  
The Equal Rights Trust